

## REMARKS

Claims 11-13, 16, 18 and 19 are pending in this application, claims 1-10 having been previously cancelled and claims 14-15 and 17 having been presently cancelled. Claims 11-13 and 16 remain withdrawn from consideration.

Withdrawn claim 11 has been amended to incorporate the limits of presently cancelled claims 14-15 and 17.

Claims 11-13, 16, 18 and 19 are presented for reconsideration.

Claims 18 and 19 are finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Muhlbauer et al. (GB 1,079,348) and Kaminski et al. (U.S. Patent No. 4,115,588) or Lang et al. (U.S. Patent No. 4,772,689) or Blank (U.S. Patent No. 4,847,088) in combination. Applicants respectfully traverse this rejection for the reasons that follow.

Muhlbauer et al. (GB 1079348) disclose the preparation of certain fungicidally active oxathiazol-2-one derivatives which can be used directly as fungicides or in form of a solution containing 1 part of the active substance and 100 to 1000 parts of acetone. As stated on page 3 in lines 14 to 25, the fungicidally active oxathiazol-2-one derivative can be used to prevent mycelial growth of *Corticium rolfsii*. *C. rolfsii* is a fungus of the soil and may cause root rot of the plant. See the attached Dissertation Abstract (englisch), publication date January 21, 2002, concerning *Corticium rolfsii*. Thus the disclosed preparation mentioned in GB is neither a personal care composition nor an oral composition, but rather a composition for agricultural use.

It is not completely clear but it is believed from the description that the acetone had evaporated from the agar dish before the contents were contacted with fungal cultures. Such a solution is used to distribute the active substance in diluted form upon the agar dish. The acetone can volatilize before contact with the fungi cultures. Otherwise acetone itself might have the effect of preventing mycelial growth of *Corticium rolfsii*. In any event the preparation disclosed in Muhlbauer et al. does not teach or suggest the use of the oxathiazol-2-one derivatives in a personal care or oral composition.

Applicants had urged that the preparation described by Muhlbauer et al. could not be applied to a human body, i.e. used in a personal care or oral composition, and enclosed a **2005** material safety

data sheet for acetone from a supplier stating that acetone is a target organ and reproductive toxin. Hence, acetone is not a cosmetically tolerable adjuvant. In addition, Muhlbauer et al. do not provide any suggestion that their preparation could be used for human beings. Responsive thereto the examiner cited 2 references alleged to teach the contrary.

U.S. Patent No. 6,550,080 (Kim et al.) is directed to certain fungicidal compounds having a fluorovinyl- or fluoropropenyl-oxyphenyloxime moiety and stereoisomers thereof. Said compounds have a broad spectrum of fungicidal activity against various plant pathogenic fungi (see column 14, line 66, to column 15, line 7). Col. 15, lines 20-29 describe suitable carriers for this agricultural use, not personal care use. Acetone is mentioned as one fungicidally acceptable carrier. There is however no teaching in this reference that the fungicidal compound mentioned is similar or exchangeable with an oxathiazol-2-one derivative, and there is no teaching that a composition containing oxathiazol-2-one derivatives and acetone as carrier may be used in personal care or oral compositions and may have an advantageous result. This patent claims benefit of two **1999** priority documents.

U.S. Patent No. 5,833,997 (Mahieu et al.) lists acetone as a solvent commonly use in cosmetic compositions in col. 4, line 49. But this patent issued in 1998 and claims a **1991** priority date.

However, many substances previously thought to be safe are now known not to be. Many years ago the undersigned worked for 3 months in an industrial lab investigating the vapor phase catalytic air oxidation of benzene to maleic anhydride. The lab operated for 24 hours a day and reeked of benzene all the time. But no one was concerned because that was before benzene was recognized to be a human carcinogen. Also, it was not too many years ago that virtually all liquid cough syrups contained 0.5% of chloroform, now also considered a carcinogen, and heroin (!) was originally sold for use in children's cough medicines.

Certainly applicants' current reference refutes the very old teaching of Mahieu et al. concerning the suitability of acetone as a solvent in cosmetic compositions. Hence applicants respectfully submit that Muhlbauer et al. neither teach nor suggest the use of the oxathiazol-2-one derivatives in a personal care or oral composition.

Kaminski et al. (U.S. Patent No. 4,115,588) discloses a novel class of compounds exhibiting antibacterial activity of the formula (I) in column 2. These N-chloroamino alcohol derivatives can be used as antibacterial agents in aqueous solutions or in mouthwash, shampoo, soap or other cosmetic

preparations (column 17, lines 26 to 48). Kaminski et al. disclose cosmetic and oral compositions. However the active substance belongs to an entirely different class of chemicals. Without any clear teaching that oxathiazol-2-one derivatives and N-chloroamino alcohol derivatives may be similar or interchangeable with respect to their use in personal care or oral compositions, Kaminski et al. constitutes a very remote state of the art. Indeed the teachings of Muhlbauer et al. and Kaminski et al. are so divergent that their combination is improper *per se*.

Lang et al. (U.S. Patent No. 4,772,689) disclose certain quaternary hydroxy-propyl-substituted chitosan derivatives and cosmetic compositions as set forth in column 2, lines 32 to 49. Lang et al. disclose cosmetic compositions; however the active substance belongs to a different class of chemicals. Without any clear teaching that oxathiazol-2-one derivatives and quaternary hydroxy-propyl-substituted chitosan derivatives may be similar or interchangeable with respect to their use in cosmetic or oral compositions, Lang et al. is also a far remote state of the art.

Blank et al. (U.S. Patent No. 4847,088) discloses certain synergistic antimicrobial compositions obtainable by combining a silyl quaternary ammonium compound with an acid as set forth in column 2, lines 40 to 62. Surfaces that can be treated include carpet, fabrics, walls, tables, ceilings, and furnishings, especially paper. See column 9, lines 1-8. Blank et al. do not teach the use of cosmetic or oral compositions. Moreover, without any clear teaching that oxathiazol-2-one derivatives and the combination of a silyl quaternary ammonium compound with an acid may have a similar or interchangeable effect with respect to their use in cosmetic or oral compositions, Blank et al. is also a very remote state of the art.

Re the combination of the above references, applicants comment as follows. Each of the cited references (Muhlbauer et al., Kaminski et al., Lang et al., and Blank et al.) teaches the use of a specific class of antimicrobial or fungicidally active substances and the application of compositions containing said substances.

Kaminski et al. and Lang et al. teach that N-chloroamino alcohol derivatives and quaternary hydroxy-propyl-substituted chitosan derivatives can be used in cosmetic or oral compositions, whereas Muhlbauer et al. and Blank et al. teach that oxathiazol-2-one derivatives and the combination of a silane with an acid, respectively, can be used in agriculture or in soft or hard surface compositions.

There is absolutely no teaching in any of these references that an oxathiazol-2-one derivative may be used in a personal care or oral composition. Indeed the teachings of Kaminski et al., Lang et al. and Blank are so divergent from Muhlbauer et al., that their combination is improper *per se*.

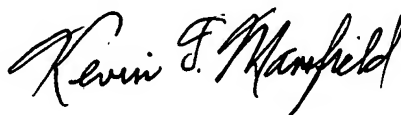
Reconsideration and withdrawal of the final rejection of claims 18 and 19 under 35 U.S.C. § 103(a) as being unpatentable over Muhlbauer et al. (GB 1,079,348) and Kaminski et al. (U.S. Patent No. 4,115,588) or Lang et al. (U.S. Patent No. 4,772,689) or Blank (U.S. Patent No. 4,847,088) in combination is respectfully solicited in light of the remarks *supra*.

Method of use claims 11-17 were withdrawn due to a restriction requirement. However the examiner has indicated they will be rejoined if personal care product claims 18 and 19 are allowed and they are of the same scope. Since method of use claims 11-13, 16, 18 and 19 are of the same scope with regard to compounds of formula (1), rejoinder is respectfully solicited.

Since there are no other grounds of objection or rejection, passage of this application to issue with claims 11-13, 16, 18 and 19 is earnestly solicited.

Applicants submit that the present application is in condition for allowance. In the event that minor amendments will further prosecution, Applicants request that the examiner contact the undersigned representative.

Respectfully submitted,



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Enclosures: Form PTO-1449, 1 reference